Secrt. II-27—60,004—17-11-48.

Home (1949) Department.

(21)

MS. SERIES.

G.O. NO 4764

Dated 29-11-49

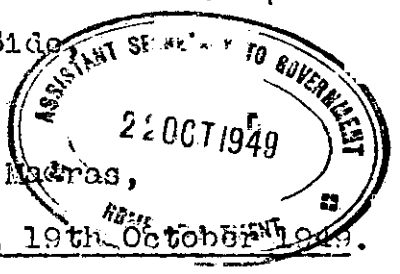
[Despatch Abstract.]

Borstal school - Convict Annappa Gowda — S.C. No. 15/49 on the file of the Sessions Judge, South Kanara (C.A. No. 506/49 on the file of the High Court) — Transfer to a Borstal school under section 10-A of the Borstal schools Act — Not

B.C.No.393 of 1949.

104955
24/10

From
Sri R.Jayaram Ayyar, M.A., B.L.,
Deputy Registrar, Appellate Side,
High Court, Madras.



To
The Secretary,
Home Department, Government of Madras,
Madras.

Dated, 19th October 1949.

Sir,

Sub:- Recommendation of Sessions Judge South Kanara - reconviction Annappa Gowda in Sc.15 of 49,- High Court's Judgment in C.A.No.506 of 1949 and observations of High Court on recommendation.

I am to forward herewith the letter Dis.No.4343 of 1949 dated 16-8-1949 from the Sessions Judge South Kanara with enclosures together with a copy of the judgment of the High Court in Criminal Appeal No. 506 of 1949 and of the observations of the High Court on the said letter of recommendation (Dis.No.4343 of 1949).

Yours faithfully

R. Jayaram

DEPUTY REGISTRAR, APPELLATE SIDE.

ND

C.A.No.506 of 1949.

We are unable to support the recommendation of the learned Sessions Judge that the accused should be dealt with under section 10-A of the Borstal Schools Act. That section is intended to deal with persons of criminal habits or tendencies or who associate with persons of bad character. In the present case there is absolutely nothing to show that the accused belongs to this class of persons. He committed the murder because he was indignant at the outrageous behaviour of the deceased. If he is sent to a Borstal School, he must be released when ~~he released, when~~ he attains the age of 23 years. His present age is stated to be between 18 and 20 and detention till he attains 23 years of age would be clearly insufficient punishment for this offence.

Id. L.C.H.

(Id.) P.V.B.

ND

Home Department 5/

T.M.

(C.No.10 4955N/49) From the Deputy Secretary to Govt., Home Dept
To The Registrar, High Court, Madras

Subject:- prisoner - Convict ANNAPPA GOWDA - S.C.No 15/49 on the file of Sessions Judge, South Kanara - Transfer under Section 10-A - Recommendation of the Sessions Judge.

p/cfo. Ref Mr Jayarama Ayyar's letter no. B.C. 393/49, dt 19-10-49.

~~please send copy of~~ Letter Dis. no. 4343 of 49 dated 16.8.49 of the Sessions Judge, South Kanara ~~and the printed copy of Judgment in S.C. no. 15/49 referred to in your letter cited~~ with its enclosures said to have been sent with the High Court letter cited, have not been received. Please send them. Receive

Ack 29.10.49

p.c. only Copy

Thr The. 25/4/49.

15

Endt. no. 104955 N/49-1, Dt 4-11-49

Dy. Secy. Rly.
4/11

20/ The D.G.S. of Pakistan
(with pp. 7-12 c/f. & records of Rly. concerned to be retd. with reply.)
C.R.D. 4/12/49.

B.C.No.393 of 1949.

From

Sri R.Jayaram Ayyar, M.A.,B.L.,
Deputy Registrar, App.Side, HighCourt, Madras.

To

The Secretary to Government,
Home Department, Fort St.George, Madras
(with enclosures).

Dated 1st November 1949.

Sir,

S.C.No.15 of 1949 Sessions Court, South Kanara, Criminal Appeal No.506 of 1949 - post copy of telephonic message dated 26-10-49.

--

I am to forward herewith the Letter Dis.No.4343 of 1949, dated 16th August 1949 from the Sessions Judge of South Kanara and its enclosure of ~~two~~ one printed ~~copies~~ copy of the judgment of the Sessions Court.

for Deputy Registrar, 1.11.49
App.Side.

*Enclosures:

1. Letter Dis.No.4343 of 1949 and ~~2 copies~~ 1 Copy of the printed judgment of the lower Court.
2. Copy of recommendation of the High Court.

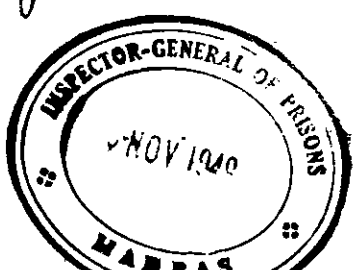
PP

18

Home Department.

Endorsement No 104955 N/49-1, Dated 4-11-49.

Referred to the Inspector-General of prisons. He is requested to state what recommendation she would make in the case having regard to the remarks of the Hon'ble the Judges of the High court on the recommendation of the Sessions Judge, South Kanara.



Deputy Secretary to Govt.
Home Dept

Hme. 3/11/49. 3-11-49

To/ The Inspector-General of prisons, Madras.
(with pages 7-12 c.f and records at-
(R) in ogl. to be retd. with reply)

Sameas p 3ante

9

C.A.No.506 of 1949.

We are unable to support the recommendation of the learned Sessions Judge that the accused should be dealt with under section 10-A of the Borstal Schools Act. That section is intended to deal with persons of criminal habits or tendencies or who associate with persons of bad character. In the present case there is absolutely nothing to show that the accused belongs to this class of persons. He committed the murder because he was indignant at the outrageous behaviour of the deceased. If he is sent to a Borstal School, he must be released when he attains the age of 23 years. His present age is stated to be between 18 and 20 and detention till he attains 23 years of age would be clearly insufficient punishment for this offence.

Id./ L.C.H.
Id./ P.V.B.I.
12th October 1949.

PP

From
T.Krishna Moose, Esquire, B.A., P.L.,
Sessions Judge of South Kanara.

To
The Secretary
) Home Department, Government of
Madras, Madras.

Through the Registrar, High Court of Judicature,
Madras.

Dis.No. 4343 of 1949. Mangalore dated 9th August 1949.

16 8 1949

Sir,

CA 506/49.

Sub: Borstal School - Convict Annappa Gowda - Accused in S.C. 15 of 1949 on the file of this Court - Confined in the Central Jail, Cannaore - Recommendation for transfer to a school under Sec.10-A of the Madras Borstal Schools Act - Submitted.

I have the honour to submit that one Annappa Gowda aged between 18 and 20 was convicted by this Court in S.C.15 of 1949 on the file of this Court for offences under Sections 302 I.P.C. and 324 I.P.C. and was sentenced to transportation for life and Rigorous imprisonment for six months respectively and is at present confined in theCentral Jail Cannanore.

2. The prosecution evidence disclosed that the accused and his father who were the tenants of the deceased suffered severe insult and injury (vide para 4 of the judgment) at the hands of their landlord, the deceased, and the accused committed the offence when his mind had been inflamed by deep resentment of the wrong done to him and his family. This and other circumstances of the case, taken along with the youth of the accused, considered as a whole, would, in my opinion, justify a recommendation to the Government for his case being dealt with under Section 10A of the Borstal Schools Act.

(R)/pp 1-6

3. Two printed copies of the judgment in the case are submitted herewith.

Yours faithfully,

C. Krishna Moose
Sessions Judge.

115417 14/1 13

JAIL DEPARTMENT.

From
Lt.Col. G.S. Gill, M.B , CH B.,
Inspector General of Prisons,
M A D R A S

To
The Secretary to Government,
Home Department.
M A D R A S.

ASSISTANT SECRETARY TO GOVERNMENT 13 NOV 1949 HOME DEPARTMENT

No. ROC.1775/S/4/49 Dated the 9th November, 1949.

Sir,

Sub:- JAILS - Central Jail, Cannanore - (Youthful offender) C.No 12651, Annappa Gowda - Accused in S.C.No.15/1949 on the file of the Sessions Judge, South Kanara - Recommendation under section 10-A of the Madras Borstal Schools, Act 1925.

Ref:- Government Endt.No. 104955-N/49-1, Home, Dated 4-11-1949.

I have to state that this boy may be sent to the Central Jail, Vellore to undergo modified Borstal Training till he attains the age of 25 years and then transferred to the main jail.

2. Nominal roll of the prisoner is enclosed. The enclosures received with the Government Endt. cited above are resubmitted.

LT.COL.
INSPECTOR GENERAL OF PRISONS.

(ENC:)
R.S.10/XI

15

FORM No. 52. (*See* Rule 879, Part I of Vol. II, M.P. and R.M.) Judl. (Jail II)-13.

NOMINAL ROLL OF MALE* CONVICT No. 12651 A†

Name Annappa Gowda Son of Somayya Gowda.

Residence (Village, Taluk and District.) Ubaradakkamelkeri, Pelkiri, S. Kanara

Caste Hindu. Gowda. Present age 17 years. Occupation Cultivation

Section and Code under which imprisoned. 302 and 324 IPC.

Original sentence of order and date. Transportation for life u/s. 302 IPC and 3½ months R.I. u/s. 324 IPC. to run concurrently. 26.7.49.

Adjudicating Court and Calendar number of case. Sessions Judge, South Kanara. S.C. No. 15/49.

Unexpired term of sentence after deducting remission earned. 19 year(s) 7 Month(s) 21 Day(s).

Present state of health and fitness to undertake a journey.‡ T H.

8

Result of appeal (if any) Dismissed vide C.P.No. 506/49 & 12.X.49 by Hon'ble Court, Madras.

Conduct in Jail Good

Personal and descriptive marks § 1) Mole below centre left Ellan Bow

2) Mole left cheek & Mole right side chin

Remarks Direct. Committed. Rigorous Imprisonment. Casual Class II

* Strike out and add "Female" when necessary.

† After the Prisoner's number, add his class A or B, according as he is classed as a Casual (and whether Star) or Habitual, respectively, and after the letter, add the number of previous convictions, thus—No. 3742 B-2.

‡ When a journey is about to be undertaken by a prisoner, the roll is to be signed by the Medical Officer.

§ Personal and descriptive marks are to be given when (1) rolls accompany prisoners transferred. (2) police assistance is sought for the recapture of an escaped prisoner (Rule 549, Part I of Vol. II, M.P. and R.M.)

Cannanore Central JAIL,
7. 11. 1949

25	7.	69
7	11.	49
18.	8.	19
27	.	.
21.	7.	19

Superintendent.

90/29/49

1

Home Department

(C. No. 104955 N/49) precedent at p. 37 c-b of (M) & G.O.Ms. 95, Home 6-1-49.

G.O.Ms. No. 4764 Dated 29.11.49.

Borstal School – Convict Annappa Gowda – S.C. No. 15/49 on the file of the Sessions Judge, South Kanara (C.A. No. 506/49 on the file of the High Court) – Transfer to a Borstal School under Section 10-A of the Borstal Schools Act – Not approved.

p. 11 c-b – Read:- From the Sessions Judge, South Kanara, Dis. No. 4343/49, Dt 16-8-49.

pp 147 c-b – From the Dy. Registrar, High Court, B.C. No. 393/49, Dt 19-10-49 & 1-11-49.

p. 13 c-b – From the D.G. of Prisons, No. Roc. 1775/S.4/49, Dt 9-11-49.

—

ORDER.

The Govt. do not consider the case of Convict Annappa Gowda sentenced to ~~transportation~~ (transportation for life u/s 302 I.P.C.) & R.I. for 6 months (under Sec 324 I.P.C.) by the Sessions Judge, South Kanara in S.C. No. 15/49 on his file (C.A. No. 506/49 on the file of the High Court) suitable for action under Section 10-A of the Madras Borstal Schools Act, 1925.

(R) cp (W) a-p 1

2. The D.G. of Prisons is requested to transfer the boy to the Central Jail, Vellore to undergo Borstal training till he attains the age of 25 years and then transfer him to the main jail.

cp X a-pp 2-3 n.b

Thus. 28th Nov. 49.

29.11.49

To

drd. 8/12

The Hon'ble the Chief Justice. (Encl)

The Sessions Judge, South Kanara. (Encl. Para 1 a-c)

The D.G. of Prisons. (Encl)

The Supdt., Central Jail, Cannanore.

ASSESSOR CASE

In the Court of Sessions, South Kanara.

July Sessions.

Tuesday, the 26th day of July, 1949.

PRESENT:—C. KRISHNA MOOSE, Esq., B. A., B.L.,
Sessions Judge.

Sessions Case No. 15 of 1949.

NAME OF THE ACCUSED:		ANNAPPA GOWDA.
CHARGES:		1. Murder—Section 302 I.P.C.
		2. Voluntarily causing hurt with a dangerous weapon—Section 324 I.P.C.
ASSESSORS:	MESSRS:	1. Cyril Minezes (R.C. Christian).
		2. N. Padmanabha Bhat (Brahmin)
		3. Balakrishna Holla (do).
		4. Raghavendra Baliga (G.S. Brahmin).
OPINION OF ASSESSORS:		All the assessors are unanimous in their opinion that the accused is not guilty of any offence.
FINDING OF THE JUDGE:		The accused is guilty under Sections 302 and 324 I.P.C.
SENTENCE:		The accused is sentenced to transportation for life under Section 302 I.P C. and to rigorous imprisonment for six months under Sec. 324 I.P.C., the sentences to run concurrently.

The accused was defended by Sri K. Balakrishna Rao, advocate (Crown Brief).

The case was committed by Sri A. Babu Shetty, Stationary II Class Magistrate, Puttur, in R.C. No. 11 of 1948 on his file (F.I. No. 31 of 1948 of Sullia Police Station.)

Judgment.

The accused, who is a youth aged between 18 and 20, stands charged under Section 302 of the Indian Penal Code for the offence of murdering his landlord Krishna Bhatta on the night of 28-6-1948 by shooting him while sitting on the front verandah of his house.

2. He is further charged with having caused hurt to Sitharama, son of the said Krishna Bhatta, one of the pellets fired from the gun having hit the boy in his arm.

3. The accused has denied having committed the offences and pleaded not guilty to the charges.

4. Dose Krishna Bhatta was a well-to-do landholder living in Ubradkamithur in Puttur Taluk. The accused's father; Somayya Gowda, was a tenant of the said Krishna Bhatta, and the accused, along with his father and other members of their family, was living on the land of the deceased. The accused has a sister named Sannakke, who, though married, had come away from her husband and was at the relevant time living with her parents in the same house as the accused. Venkappa Gowda, another tenant of Krishna Bhatta, desired to marry her, and Krishna Bhatta advised Somayya and the accused to give her in marriage to him. They did not agree to that at first as the girl was unwilling to marry him and, besides, her first marriage had not been dissolved yet. Krishna Bhatta insisted that Sannakke should either go back to her husband or must give him up and marry the man suggested by him. The accused and his father at first tried to persuade the girl to return to her husband and live with him. But she came back in no time whenever she would be sent to her husband. In the end, with a view to avoid the displeasure of their landlord, Somayya and the accused seemed to reconcile themselves to the other alternative of giving away the wayward girl in re-marriage to Venkappa. They accordingly told Krishna Bhatta that Venkappa might marry the girl. Never-

theless, when the marriage was about to take place, the girl outwitted them all and ran away. Krishna Bhatta became greatly annoyed and in a moment of exasperation, insisted that the whole family should quit his land forthwith. Pursuant to that angry threat, he had the accused's father dragged out of the house. When he resisted, he was beaten. The accused was also likewise abused and beaten in the attempt to drive out the whole family from the house. The accused went to his brother-in-law Koragappa and sought his help. The latter intervened and the family was at last allowed to re-occupy the house temporarily on-condition, that Koragappa would execute a genichit himself and the arrears of rent due to the landlord should be cleared partly by the execution of a promissory-note and partly by delivering over a milch cow. This happened nearly two months before the death of the deceased. The accused could not, however, easily forget the insult and cruelty suffered at the hands of the aggressive landlord. The resentment ran deep into his youthful mind and in course of time took a revengeful turn.

5. Towards the evening of the day of the occurrence, he borrowed the gun of a neighbour Balanna Gowda on the pretext that he required it for shikar, and after sunset stealthily got into the court-yard of the deceased's house and shot at him while he was sitting on the front verandah of his house. The shot hit the deceased in his chest and he dropped down instantaneously with blood gushing out from his nose and mouth. The deceased's son Sitharama, who was sitting by him, was also hit in the arm, and he ran crying to his grandmother, who was lying down on the upper verandah. Besides the deceased's mother and the boy Sitharama, there was also the watchman Aithappa close by. He, too, heard the report of the gun and saw the deceased dropping down dead. None of them, however, could see the assailant. The watchman made a hurried search in the compound but he could not find any one. He went out and called his brother Muthappa and Venkappa Gowda. On a thorough search of the house and its compound, they noticed a hole in the cadjan *thatti* in the north-eastern corner of the verandah, but could not make any other discovery. On the next day, information was conveyed to the patel and through the patel to the nearest police station at Sullia. The police arrived on 30-6-1948 and taking a hint from the type of cartridge used, as indicated from the wad pieces and a pellet found near the body, the gun was traced to P.W.9 Balanna Gowda. On questioning the latter, he disclosed the fact that the accused had taken away the gun on the fateful night and returned it on the same night, confiding to the witness that he had shot his landlord Krishna Bhatta and requesting the witness not to reveal the fact of his having borrowed the gun from him. The accused was not available for arrest forthwith. His house was searched and as a result of the search two empty and used cartridges, some lead pieces and a small quantity of gun powder were recovered from the kitchen loft where they had been concealed. The body of the deceased was sent up to the Medical Officer in charge of Sullia Local Fund Dispensary for postmortem examination. A number of punched out wounds were found in the chest, and seven pellets were extracted from them. Some of these had penetrated into the vital internal organs such as lungs, and the doctor naturally expressed the opinion that the death was due to the injuries to the lungs and liver caused by the penetration of pellets fired from a gun. The accused was in the end arrested on 4-7-1948 from a neighbouring forest, and at the time of his arrest two injuries were found on his face, and they were examined by the medical officer at Sullia Dispensary. Those injuries, according to the doctor, might have been caused at about the same time as the injuries found on the deceased had been inflicted, and one of them in the lip was likely to have been caused by the kick of a gun like M.O.2. He was produced before the Tahsildar-Magistrate of Puttur, and there he made a detailed statement in the nature of a confession. The investigation was completed and the final charge-sheet was laid on 15-8-1948 against the accused and three others as co-accused. The committing Magistrate discharged the other three accused and committed this accused to this Court to take his trial.

6. That the deceased Krishna Bhatta died of gun shot injury on the night of 28-6-1948 is incontrovertible. His mother P.W.1 and the watchman Aithappa P.W.2 both heard the report of the gun and in an instant they saw him sink to the ground with blood pouring forth from his nose and mouth. Going nearer to him they found life already extinct in him. A short while after the deceased was shot, P.Ws. 3 and

5 also arrived at the deceased's house and they, too, saw the deceased lying dead and profusely bleeding. The Sub Inspector of Police, who visited the scene of offence while the body remained still where the deceased had dropped dead, has spoken to having found a pellet and some cardboard pieces, resembling wad discharged from a cartridge, lying in the close vicinity of the body. The medical officer, who conducted the postmortem examination, has stated that no less than 7 pellets were extracted by him from the several wounds found on the body of the deceased, and that the death was caused by shock and haemorrhage resulting from the gun shot injuries that had penetrated into the lungs and other vital organs of the deceased. In the face of all this evidence that stands virtually uncontradicted, there is no room whatever for doubt that the deceased met with his death as a result of shooting. The only material point for decision, therefore, will be whether it is proved also beyond doubt that it was the accused that shot and killed the deceased.

7. That the accused had some strong motive to do harm to the deceased appears to be amply clear on the prosecution evidence. The deceased high-handedly drove out the accused along with the rest of his family from their dwelling and abused and beat the accused and his father nearly two months before the occurrence without any just ground or provocation. Their only fault was that they could not prevail upon Sannakke, the accused's strong-willed sister, to marry a man of the choice of their landlord during the subsistence of her first marriage with another. It is only natural that the harsh and tyrannous treatment meted out to the accused and his father by the deceased left behind, on the immature mind of the accused, bitterest resentment. Those feelings, so rankling in him for several days, seem to have at last prompted him to avenge the wrong mercilessly, when he got the opportunity for wreaking vengeance secretly. The accused, no doubt, has denied that there was any such incident, as spoken to by the several witnesses, including his brother-in-law P.W.8, but there can be hardly any room for doubt, on the prosecution evidence, that the main incidents spoken to by the witnesses, are substantially true and the accused was really harbouring feelings of burning hatred and revenge towards the deceased at the relevant time. There can be no reason whatever to doubt the truth of the testimony of P.W.8, whose natural leanings would be only on the side of the accused, having regard to the rather near relationship existing between him and the accused. And that testimony would go a long way to prove the truth of the main incidents touching this matter, leaving aside the details. That the accused had some kind of motive to commit the offence appears to me to be thus undoubted.

8. Now coming to the events directly connected with the actual occurrence, the most important link in the evidence is furnished by the testimony of P.W.9 Balanna Gowda. He has clearly deposed that a little after sunset on the day of the death of the deceased, the accused went to him and borrowed his gun, saying that he required it for shikar and brought it back a little before daybreak. He has also said that the accused entreated him not to reveal his having borrowed the gun, confessing that he had shot the deceased with it. The evidence of this witness is sought to be discredited on the ground that the accused had at one time tied up the witness's cow and there was some exchange of words between them in connection therewith. The witness was frank enough to admit that his cow had been tied up by the accused a year before the occurrence and he abused him for having done so. The suggestion that he pushed or beat the accused in the course of that incident is refuted by him. He has repudiated the further suggestion that the incident has made them enemies for ever. To my mind, these suggestions are not likely to be well-founded. The very fact that the witness, with obvious candour, admitted the incident such as really happened, when he could well have denied it altogether if he were unscrupulous, would go to indicate clearly that there is hardly any real force behind these random suggestions. The incident such as it was, appears to be too trivial to afford any sufficient motive for the witness to give perjured evidence against the accused so as to implicate him in a crime of this gravity. Moreover, the witness's evidence is corroborated in strong measure by the evidence of P.W.15, the Fire Arms Expert, who has positively stated that the empty cartridge recovered on search from the accused's house, must necessarily have been discharged from the witness's gun, M.O.2. P.W.15 has added that every gun would leave its characteristic mark on the cartridge and

the mark found on M.O.3 could not have been left by any other gun than M.O.2. The fact that the empty cartridge fired from the witness's gun was found concealed in the accused's house would, viewed in the light of the rest of the indisputable facts in the evidence, reasonably justify the inference that the accused had the use of the witness's gun as spoken to by the witness. That the cartridge was recovered from the accused's house on search by the police, is spoken to by the investigating police officer, as well as the patel who was also present at the search. Thus, there are material circumstances sufficiently conclusive to connect the accused with the crime in the present instance. In this state of the evidence so far discussed, the confession of the accused before the Tahsildar-Magistrate recorded under Section 164 Cr.P.C. would also become highly relevant. Exhibit P10 is that confession. It is a long and rather vivid narrative full of details of a somewhat intimate character. It is difficult to imagine that it is a merely tutored version of events and incidents that purely were imaginary. The accused has no doubt retracted the confession. It should be also noted that on the first day on which he was produced before the Tahsildar-Magistrate he said to the Magistrate in answer to a specific question that he was beaten by the police and he was coerced to make a statement. The Tahsildar-Magistrate quite properly did not record any statement from him on that day. The Tahsildar gave him time to reflect and administered sufficient warnings to him. He was also kept out of police influence in the meantime. When he was again produced after the lapse of a day or two, he still said that he wished to make a statement and that he understood thoroughly the warnings given to him by the Magistrate. With regard to the voluntary nature of the confession made to him, the Tahsildar-Magistrate, giving evidence as P.W.11, has stated: "When the accused said on the first day that he had been beaten and threatened by the police I warned him that he was not bound to make any statement and gave him time for reflection removed from all police influence. Nevertheless, when he was brought before me on 8-7-1948, he said that he was willing to make a true statement. I warned him of the consequences if he would make any statement. I was thoroughly satisfied that the accused wished to make a voluntary statement and then only I took down his statement. The accused did not complain of any pain due to beating. I did not notice any sign in him of beating." There can be no doubt that the Magistrate was fully satisfied that the accused was making a voluntary statement, though he had on the previous occasion stated that the police had beaten him and asked him to make the statement. The confession of the accused, which, as already said, is a long and coherent narrative, covering incidents and facts not likely to be in the knowledge of outsiders cannot be lightly brushed aside, though the accused had, at one stage, told the Magistrate that he was ill-treated by the police and retracted the confession in the committal Court itself. The voluntary character and truth of the confession has to be judged then by the important test as to how far it conforms to the facts and circumstances proved beyond doubt by other evidence in the case. Judged by that test, every material fact narrated in the confession will be found to have received high degree of corroboration by other evidence in the case. The motive for the crime, as already said, is spoken to, not only by the relations and tenants of the deceased, but also by the brother-in-law of the accused himself. The borrowing of the gun from Balanna Gowda is proved by the evidence of Balanna Gowda reinforced strongly by the expert evidence of the Fire Arms Expert, coupled with the proof of the recovery of the empty cartridge, tested by the latter, from the house of the accused. The proof of this latter fact is furnished by the village patel and the investigating police officer, P.Ws. 12 and 14 respectively. Regard having to the substantial corroboration of the accused's confession, derived by other independent evidence, I am clearly of opinion that the confession, though retracted, should be taken as true and, therefore, affording quite a valuable piece of evidence for bringing home the offence to the accused. The cumulative effect of all the circumstances clearly brought out in the evidence that are in substantial accord with the accused's own retracted confession is, in my judgment, such as to render the links to connect the accused with the murder of the deceased complete and the conclusion irresistible that the accused and no other committed that offence.

9. All the four assessors have, for some reason or other, expressed the opinion that the accused is not shown to be guilty of the offence. For the reasons I have

endeavoured to set forth, I am unable to agree with the assessors in that opinion. Holding that the evidence is sufficiently certain and conclusive to prove that the accused committed the offence, I would convict him for the offence of murder under Section 302 of the Indian Penal Code.

10. The age of the accused, according to the medical evidence, is between 18 and 20. There can be no doubt that the accused and his father had suffered severe insult and injury at the hands of the deceased, their landlord, and the accused committed the offence when his mind had been inflamed by deep resentment of the wrong done to him and his family. The provocation that the accused had, not being sudden in any sense, does not afford him any valid ground of defence for the offence of murder committed by him. All the same, that circumstance, taken along with the youth of the accused, would fully justify the lesser penalty being imposed on the accused for the offence.

11. The accused, as said at the outset, is a lad of 18 or 20. The circumstances of the case considered as a whole would, in my opinion, justify a recommendation for his case being dealt with by the Government under Section 10A of the Borstal Schools Act.

12. The accused is accordingly convicted and sentenced to transportation for life, but with the recommendation to the Government for being dealt with under Section 10(A) of the Borstal Schools Act.

13. With regard to the charge under Section 324 I.P.C., though the boy Sitharama that was hurt is not examined as a witness, there is enough evidence furnished by P.W.1 and the other prosecution witnesses that the boy was actually hit by one of the pellets fired from the same shot as killed his father, and he got his arm injured. The doctor, too, has spoken to the fact that the boy's arm was found injured. The doctor extracted also a pellet from his wound. The offence under this Section is also thus clearly made out against the accused. He is accordingly convicted and sentenced to six months' rigorous imprisonment for the offence under Section 324 I.P.C. in the charge. This sentence shall, however, run concurrently with the sentence just now passed on the accused for the graver offence of murder under Section 302 I.P.C.

Dictated to the shorthand-writer, transcribed by him, and pronounced in open Court, this, the 26th day of July, 1949.

(Sd). C. KRISHNA MOOSE,
Sessions Judge.

N. B. The accused will be confined in the Central Jail at Cannanore.

APPENDIX.

The following witnesses were examined:—

FOR PROSECUTION:—

1. Devaki Amma.
2. Aithappa Gowda.
3. Venkappa Gowda.
4. Dr. K. Laxminarayana Rao. (Medical Officer, Local Fund Dispensary).
5. Muthappa Gowda.
6. Thimmayya Bhandary.
7. Puttanna *alias* Aithappa Gowda.
8. Koragappa Gowda.
9. Balanna Gowda.
10. Sri B. L. Rao (Magisterial clerk).
11. Sri B. Narayana Rao (Tahsildar).
12. Muthappa Gowda (Patel).
13. P. Ramaya (P.C. 421).
14. Sri B. M. Sridhar (Sub Inspector).
15. Sri V. S. Subramanian (Fire Arms Expert).

FOR DEFENCE.

None.

The following exhibits were filed:

FOR PROSECUTION:

P1	1- 7-1948	Postmortem certificate issued by P.W.4.
P2	1- 7-1948	Wound certificate issued by P.W.4 regarding the injuries on Sitharama, son of the deceased.
P3	5- 7-1948	Do by do re. do on the deceased.
P4	29- 6-1948	Statement of P.W.6 recorded by the patel.

P4(a)	29- 6-1948	Report of the patel to the Police Station.
P5	3- 5-1948	Genichit executed by P.W.8 in favour of the deceased.
P6	do	Promissory note executed by the accused and his father in favour of the deceased.
P7	9- 8-1948	Office copy of letter sent to the Chemical Examiner.
P8	22-10-1948	Report of the Chemical Examiner.
P9	8- 1-1949	Report of the Imperial Serologist.
P10	8- 7-1948	Confessional statement of the accused recorded by P.W.11 under Sec. 164 Cr.P.C.
P10(a)	do	Certificate of P.W.11 in do.
P11	1- 7-1948	Search-list prepared on searching the house of the accused.
P12	—	Eye-sketch of the scene of offence.
P13	2- 4-1949	Statement of the accused in the lower Court.

FOR DEFENCE:

D1	10-11-1948	Portion marked in the deposition of P.W.1 in the lower Court.
D2	17-11-1948	Do of P.W.5 in do.

MATERIAL OBJECTS:

1. 7 pellets (recovered from the body of the deceased).
2. Gun.
3. 3(a) } 2 cartridge cells found during the search of the accused's house.
4. Blood-stained *mundu* of the deceased.
5. Mat.
6. Blood-stained cement plaster pieces.
7. Cardboard wad pieces.
8. Lead piece.
9. 5 lead balls.
10. 13 small pellets.
11. 31 grey metal pieces.
12. 2 percussion caps
13. Gun powder.
14. One lead pellet extracted from the body of the deceased's son.
15. Diagram of the class characteristic marks of M.O.2 on M.O.3 (red empty cartridge).

(Sd). C. KRISHNA MOOSE,
Sessions Judge.

(True copy)

C. Krishna Moose
Sessions Judge.

WORDS 3895.

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CA 556/49

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Wednesday, the twelfth day of October 1049/49

One thousand nine hundred and forty-nine.

ASSISTANT SECRETARY TO GOVERNMENT 22 OCT 1949 JUDICIAL DEPARTMENT

PRESENT:-

THE HONOURABLE MR. JUSTICE HORWILL
and
THE HONOURABLE MR JUSTICE BALAKRISHNA AYYAR.

CRIMINAL APPEAL No.506 of 1949

Ahnappa Gowda Appellant (Prisoner).

Appeal against the sentence passed by the Sessions Judge of the Court of Session of the South Kannara Division on 26th day of July 1949 in Sessions Case No.15 of the Calendar for 1949.

This appeal coming on for hearing under the provisions of Section 421, Code of Criminal Procedure, and counsel not appearing on behalf of the appellant; upon perusing the petition of Appeal and the Judgment of the Court of Session, the court delivered the following

J U D G M E N T.

(Judgment of court delivered by Balakrishna Ayyar, J).

The sessions Judge of South Kanara has convicted the appellant (1) under section 302 of the Indian Penal Code of the murder of one Krishna Bhatta and (2) under section 324 of the same Code for having caused hurt with a deadly weapon to Sitharama, son of Krishna Bhatta.

The accused had ample motive to commit the murder. He had a sister who had left her husband and the deceased who was the landlord of the father of the accused insisted that the girl should either go back to her husband or give him up and marry a man he suggested. The father of the accused agreed to give his daughter in marriage to the person mentioned by Krishna Bhatta, but the girl had a will of her own and outwitted them all by running away. Krishna Bhatta became very indignant and attempted to eject the accused, his father and relations summarily from the house they were occupying. Both the accused and his father were dragged out of the house and beaten. Finally, however, they were allowed to stay on in the house on certain terms. The humiliating treatment accorded by Krishna Bhatta deeply angered the accused.

2. There is no eye-witness to what happened. But the circumstantial evidence is full and complete. A little after sunset on 28-6-1948 after

the accused borrowed from P.W.9 his gun, M.O.2, saying that he required it for Shikar. A little before daybreak the following morning the accused ~~delivered~~ returned the gun to P.W.9 and entreated him not to reveal to anybody that he had borrowed the gun. At the same time he confessed that he had shot the deceased with it. The Police traced the gun to P.W.9 from the type of cartridges used and other indication. They searched the house of the accused and from there seized two empty used cartridges besides some pieces of lead and a small quantity of gun powder. P.W.15, an expert in firearms, positively deposed that the empty cartridges recovered from the house of the accused must necessarily have been discharged from the gun, M.O.2. The accused was absconding after the offence and was arrested only on 4-7-1948 in a neighbouring forest. At that time he had on his lip an injury which according to the doctor who examined him could have been caused by the kick of a gun like M.O.2, a rather suggestive circumstance. The accused was subsequently produced before the Tahsildar Magistrate of Puttur to whom he made a complete confession. The learned Sessions Judge observed that the confession is a long and coherent narrative covering incidents and facts not likely to be within the knowledge of outsiders and cannot therefore be brushed aside. Even though the confession has been retracted, there is no reason to doubt that it was voluntarily made at the time and that it gives a truthful account of what happened. The circumstancial evidence is also complete.

3. The learned Sessions Judge has sentenced the accused to transportation for life under section 302 of the Indian penal Code, and to a sentence of six months' rigorous imprisonment for the offence under section 324. The former is the minimum sentence fixed by the law, and the latter is by no means excessive.

We therefore confirm the convictions and sentences and dismiss the appeal.

Sd. R. Jayaram Ayyar,
Deputy Registrar, Appellate Side.

(True copy)

SUB ASSISTANT REGISTRAR, APPELLATE SIDE.

To
1. The Sessions Judge of South Kanara Division, in duplicate for communication to the prisoner
2. The District Magistrate South Kanara.
3. Inspector General of Police, Madras.
4. Superintendent Central Jail Cannanore with reference to his letter No.12651 /49 dated 22-8-49 regarding convict No.12651.

5. The Secretary Home Department Government of Madras. Madras with copy of the observations of the High Court on the letter of the Session's Judge dis.4343/49 d/16-8-49 (With enclosures)

No.R.2/49 Office of the Superintendent, Central Jail Cannanore. dated 3-12-49

125490

From Captain C.N. Raghunathan, B.A., Superintendent.

To: The Deputy Secretary to Government of Madras Home Department, Madras

Sir,

Sub:- Borstal School - convict Annappa Gowda - S.C. No. 15/49 on the file of the Sessions Judge, South Kanara (C.A.No. 506/49 on the file of the High Court Madras) - Transfer to a Borstal School under section 10-A of the Borstal Schools Act - Not approved.

Ref:- G.O. Ms. No. 4764 Home Deptt. dated 29-11-49.

I hereby acknowledge receipt of the above Govt. Order.

Home Dept with papers

7.12.49

C. N. Raghunathan

Superintendent

Copy to the Inspector General of Prisons, Madras.

(C.No. 104955 N/49)

Prisoners - Convict Annappa Gowda - S.C.No. 15/49 on the file of the Sessions Judge, South Kanara - Transfer to Borstal School under Section 10-A of the Borstal Schools Act.

p. 11 c/f — From the Sessions Judge, South Kanara, Dis. No. 4343/49, Dt 16-8-49.

pp 1 & 7 c/f — From the Deputy Registrar, High Court, Madras, B.C.N. 393/49, Dt 19-10-49 & 1-11-49

p. 13 c/f. — From the I.G. of Prisons, No. Roc. 1775/S.4/49, Dt 9-11-49

—

cp. para 1 on p. 1 of (R) — Annappa Gowda, aged about 17 years was found guilty of murder of his landlord Krishna Bhatta on the night of 28-6-48 by shooting him while sitting on the front verandah of his house under Section 302 I.P.C. by the Sessions Judge, South Kanara and was sentenced to transportation for life and R.I. for six months under Section 324 I.P.C. The facts of the case are briefly set out in para. 1 & 2 of the High Courts' judgment at pp. 7-9 of (R). The murder was committed

cp. M on p. 7 of (R) — out of the humiliating treatment accorded by the deceased which deeply angered the accused. The Sessions Judge held that there

cp. K on p. 5 of (R) — is sufficient evidence certain and conclusive to prove that the accused committed the offence of murder under Section 302 I.P.C. As regards the punishment please see the observations of the Sessions Judge in paras 10 to 12 of his Judgment on p. 5 of (R)

2. An appeal against the sentence of transportation for life filed by the accused was dismissed by the High Court.

cp. H on p. 9 & (R) — 3. With refee. to his observations in paras 11 and 12 of his Judgment on p. 5 of (R), the

cp. para 2, p. 11 c/f. — Sessions Judge has forwarded the case of the accused to Govt. through the High Court with a recommendation that he may be dealt

p. 86, L.K. No 103. — with under the provisions of Section 10-A of the Borstal Schools

P.T.O.

Act. The High court do not, however, support the recommendation of the Sessions Judge for the reasons stated on p. 3 c.f. p.3 c.f.

4. The D. G. of Prisons, who was consulted, has stated that this boy may be sent to the Central Jail, Vellore to undergo modified Borstal Training till he attains the age of 25 years and then transferred to the main jail cp paras 1, p 13 c.f.

5. The principles to be followed in ordering the transfer of a convict from an adult jail to a Borstal School under Section 10-A of the Borstal Schools Act are set out in Mr. MacEwen's note extracted on p. 1 of (J). The convict is reported to be 17 years old by the D. G. of prisons and between 18 to 20 years by the Sessions Judge. According to the Sessions Judge the offence committed ~~by the convict was not a premeditated one and was due to provocation on account of the severe insult and injury at the hands of the deceased~~ when the mind of the accused was inflamed by deep resentment received by his father ✓ p. 86, B.K. No 103 cp B on p 1 of (J) p 15 c.f para 1, p 1 c.f cp paras 10, p 5 of (R) of the Govt to their Dist family

If the Govt decide that the convict may be transferred to the Borstal School, Palamcottah as recommended by the Sessions Judge, he will only serve the portion of the unexpired residue of his sentence till he attains the age of 23 years. The question of remitting the remaining portion of the sentence will have to be considered before the expiry of the period of detention in the school - vide instructions in para 3 of the circular Memo. No. 1467 S(A) G-5, Home, Dt 14-8-41. However for the reasons stated by the Hon'ble the Judge of the High court, it is for orders whether the Govt may agree with the Hon'ble the Judge and reject the recommendation in this case. If so, the D. G's recommendation to transfer the boy to the Central Jail, Vellore to undergo modified cp paras 11 & 12 on p 5 of (R) & para 2, p 11 c.f. (where is considered insufficient by the High Court.) + p. 2 in (J) cp p. 3 c.f. Sessions Judge's cp paras 2, p 11 c.f cp paras 1, p 13 c.f.

106955-P

S/25.11

X | Borstal Training till he attains the age of 25 years and then to transfer him to the main Jail may be accepted

b The file may be circulated to H.M.(Exh.) for order.

Thro.
23/11/49.

We may agree with the Hon'ble Court and adopt X ||

24.11.49

DEPUTY SECRETARY
28 NOV 1949
HOME

H.M.(Exh.) 25/11

~~Please see the orders in circulation above.~~
A draft order is submd for approval.

Thro:
28/11/49

28/11/49

29.11.49

Issued as G.O.Ms. No. 4764, Home, Dt 29-11-49.